



STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
820 NORTH FRENCH STREET, 11TH FLOOR  
WILMINGTON, DELAWARE 19801

TELEPHONE: (302) 571-2485

NORMAN A. BARRON  
CHIEF MAGISTRATE

POLICY DIRECTIVE 81-050

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE  
ALL CHIEF CLERKS, COURTS OF THE JUSTICES OF THE PEACE

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: NOVEMBER 3, 1981

RE: CONTINUANCE DATES

Should a request for a continuance be made by either party to a case and, at the time of such request there is absent from the Courtroom one or more of the necessary witnesses to the action, and should the motion be granted by the Court, then the rescheduled trial date should be set for more than five (5) days from the scheduled trial date.

This policy is promulgated since it is felt that it is difficult and sometimes impossible to get the continuance notices to the interested parties within a five (5) day period. To accommodate the schedules of police officers, it may be that a continuance date 2 or 3 weeks from the scheduled trial date will, on occasion, have to be made. For the reasons stated above, this is preferable

to a rescheduled trial date set for five (5) days or less from the scheduled trial date when there is no assurance that all necessary witnesses will receive timely notice of such a rescheduling.

On a related matter, I think we would all agree that there are too many continuances being requested and granted in our Courts. A continuance request should never be granted as a matter of course. A continuance request made prior to trial is addressed to the Court's discretion.<sup>1</sup> Rule 13(a) of the Justice of the Peace Court Rules of Civil Procedure; Rule 9(a) of the Justice of the Peace Court Rules of Criminal Procedure.<sup>2</sup> Generally, speaking, if one party is granted a continuance, the other party should be granted one if said party thereafter requests same. But, we must strive to cut the number of continuances being granted with regard to Justice of the Peace Court cases.<sup>3</sup> The more continuances there are, the greater is the inconvenience to witnesses and to Court personnel. The phrase "justice delayed is justice denied" seems particularly appropriate with regard to those cases which have been rescheduled several times. I request that we all strive to reduce the number of continuances being granted in our Courts.

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<sup>1</sup>A telephonic continuance request should be brought to the sitting Justice of the Peace's attention at the Justice's earliest possible convenience.

<sup>2</sup>If such a request is made during trial, the granting thereof should only be made in cases of extreme emergency. Again, the requests are addressed to the Court's discretion. Rule 13(b) of the Justice of the Peace Court Rules of Civil Procedure; Rule 9(b) of the Justice of the Peace Court Rules of Criminal Procedure.

<sup>3</sup>It is not uncommon to find cases which have been continued eight, nine or ten times. These cases demonstrate our need to examine more closely continuance requests.

It is incumbent upon Delaware's police agencies to ensure that the Justice of the Peace Courts have current assignment and vacation schedules for their law enforcement personnel. The Court should not look with favor upon a police officer's continuance request if the trial date was set based upon outdated assignment information supplied by the police agency to the Court. On the other hand, should the Court set a trial date which does not coincide with current assignment and vacation information in the Court's possession, then a police request for a continuance should be granted and the record should reflect that the continuance is granted due to the Court's scheduling error. Each case file should contain an accurate record of continuances granted, the party requesting same and the reasons therefor. This record will enable the Justice of the Peace to employ sound discretion in ruling upon further continuance requests.

NAB:pn

cc: The Honorable Daniel L. Herrmann  
John R. Fisher  
Files



STATE OF DELAWARE  
JUSTICE OF THE PEACE COURTS

FAMILY COURT BUILDING  
22 THE CIRCLE, SUITE 120  
GEORGETOWN, DELAWARE 19947  
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820 N. FRENCH STREET  
11TH FLOOR  
WILMINGTON, DELAWARE 19801  
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PATRICIA WALTHER GRIFFIN  
CHIEF MAGISTRATE

**POLICY DIRECTIVE 81-050 (1ST SUPPLEMENT)**

**TO: ALL JUSTICES OF THE PEACE  
ALL JUSTICE OF THE PEACE CLERKS OF COURT**

**FROM: PATRICIA W. GRIFFIN  
CHIEF MAGISTRATE** *PWG*

**DATE: FEBRUARY 13, 1995**

**RE: CONTINUANCES**

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Former Chief Justice Christie of the Supreme Court stated, in Administrative Directive No. 82, dated April 18, 1990, Implementation of the Recommendations of the Speedy Trial Goal Committee, that (1) "[l]itigation delay causes criminal litigants expense and anxiety and undermines the objectives of the criminal justice system," (2) "no criminal litigation should take longer than is reasonably necessary in moving through the system," and (3) "[t]rial continuances should be few, good cause should be required, and all requests for postponements should be heard and resolved by a judge." Id. at 1 - 3. He also stated, however, that the "ultimate judicial goal should be justice and not merely speed in the disposition of cases, and, therefore, litigants must be afforded a reasonable time to prepare and present their cases." Id. at 2.

Judge Barron stated in Policy Directive 81-050, dated November 3, 1981, Continuance Dates, that "there are too many continuances being requested and granted in our Courts. A continuance request should never be granted as a matter of course. A continuance request made prior to trial is addressed to the Court's discretion." Rule 13(a) of the Justice of the Peace Court Rules of Civil Procedure; Rule 9(a) of the Justice of the Peace Court Rules of Criminal Procedure. Id. at 2.<sup>1</sup> He concluded that Justices of the Peace "must strive to cut the number of continuances being granted with regard to Justice of the Peace Court cases." Id.

Justice of the Peace Courts generally attempt to accommodate the schedules of parties, witnesses and attorneys in setting the trial date for cases. This practice has, in some instances, created difficulties in meeting speedy trial goals for criminal dispositions and caused unnecessary delays in the resolution of cases. As a consequence, prior to granting a continuance request, Justices of the Peace should consider the following:

1. GENERAL POLICY - To ensure that litigation takes no longer than is reasonably necessary, trial continuances should be granted upon good cause (if the interest of justice requires it), except that requests made during trial may be granted only in cases of extreme emergency.

(a) Initial Trial Dates - Justice of the Peace Court cases should be scheduled for trial as soon as possible after arrest (in criminal cases) or filing of the complaint (in Landlord/Tenant summary proceedings for possession) or filing of the answer requesting a trial (in other civil actions, including debt claims).

(b) Reasonable Preparation Time - Litigants should be allowed a reasonable time to prepare and present their cases. C.J. Adm. Dir. No. 82, at 2.

(c) Time Frame Goals for Criminal Dispositions - With regard to criminal cases, the speedy trial goals set forth in the Chief Justice's Administrative Directive No. 82 indicates that Justice of the Peace Court criminal cases should be

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<sup>1</sup> He also noted that, if a continuance is requested during trial, the granting of the continuance "should only be made in cases of extreme emergency." Rule 13(b) of the Justice of the Peace Court Rules of Civil Procedure; Rule 9(b) of the Justice of the Peace Court Rules of Criminal Procedure. Id. at fn 2.

adjudicated as to guilt or innocence, or otherwise disposed of, within ninety days from the date of arrest.<sup>2</sup>

## 2. CONTINUANCE PROCEDURES

(a) Requirements for Continuance Requests - Continuance requests should include:

- (1) The specific reason for the continuance,
- (2) Position of opposing counsel or party on the requested continuance, if possible,
- (3) If the request is made because of attorney's or party's appearance in another court, a copy of the other court's trial notice (or, if the notice is not available, the name of the case, the court, the date and time of appearance, and the date the other case was scheduled),
- (4) Exceptions to one or more of these requirements may be made related to emergency requests, such as the last minute dispatching of a law enforcement officer to a crime or accident scene or unexpected, emergency health concerns of a party, etc.

(b) Parties and counsel are encouraged to submit continuance requests in writing.

(c) Continuances should be requested as soon as the requesting party/counsel recognizes that a conflict exists.

(d) Court Procedures - To minimize ex parte communications between parties/counsel and Judges, Justice of the Peace Court Clerks should obtain the

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<sup>2</sup>Although the Chief Justice's Directive does not specifically address Justice of the Peace Court cases, the principles enumerated by the Chief Justice to support the speedy trial goals would also apply in cases heard by Justices of the Peace. The 90 day goal which I recommend for Justice of the Peace Court is the time frame implemented with respect to the Court of Common Pleas and the Municipal Court of Wilmington. Please note that the Directive contains a specific exception to the 90 day requirement for capiases, which excludes, for the purpose of computing compliance, the time between the date a capias is issued and the date the capias is executed.

information indicated in 2(a) above and provide that information to the Justice of the Peace presiding at the Court. The Justice of the Peace shall then determine whether they wish to speak directly with the party or may ask the Clerk to communicate a response to the requesting party or to obtain additional information from the parties.

3. GRANTING OF CONTINUANCE REQUEST -

(a) At Court's Discretion - The Court has the discretion to grant a continuance if the interest of justice requires it, except that requests made during trial may be granted only for extreme emergencies. (An example of a reason for granting a continuance is that a critical witness in the case is unavailable for good cause.) Common sense and fairness should govern a court's decision whether to grant a continuance. The court may decide to grant a continuance even if the request is opposed by a party. The granting or denial of the continuance should be noted on the docket along with the initials of the judge hearing the request. The reasons for the request and for the judge's granting or denial of the request should be briefly noted on the docket. All parties shall be notified in writing (if time permits) or by telephone when the court grants a continuance.

(b) Case Conflict - If the continuance is requested because of a case conflict with another court, the Justice of the Peace may delay the decision on whether to grant the continuance to see if the other matter is resolved or postponed. (It may be appropriate to delay the decision up until the day prior to trial.)

(c) Equal Distribution of Continuances - If one party is granted a continuance, the other party should generally be granted one if they request one. See Chief Magistrate Policy Directive 80-50, at 2. Requests by a party counsel for more than one continuance should be carefully scrutinized.

4. ACCOMMODATIONS TO SCHEDULES OF PARTIES AND COUNSEL -

Attempts may be made to accommodate the schedules of parties and counsel involved in the case during the setting of the original trial date and for the trial dates assigned pursuant to one continuance from each side. Accommodations to the schedules of parties and counsel should not be made if it is likely the accommodations will unnecessarily delay the disposition of a civil case or a criminal case beyond the 90 day speedy trial goals.

5. COURT CONTINUANCES - Continuances granted as a result of a Bill of Particulars, counterclaim, or other court order, are attributed to the court, not a party.

6. CONTINUANCES FOR SETTLEMENT - If both parties agree, the court may grant a continuance for purposes of settlement for up to thirty days. Two such continuances (one from each party) may be requested.

Attached is a Justice of the Peace Court Continuance Policy sheet for public distribution, upon request.

PWG:crm

cc: The Honorable E. Norman Veasey  
The Honorable Randy J. Holland  
The Honorable Henry duPont Ridgely  
The Honorable Arthur F. DiSabatino  
The Honorable Vincent J. Poppiti  
The Honorable Alfred R. Fraczkowski  
R. Franklin Balotti, Esquire, President of Delaware State  
Bar Association  
J.R. Julian, Esquire, Vice President of Delaware State  
Bar Association, New Castle County  
Clay T. Jester, Esquire, Vice President of Delaware State  
Bar Association, Kent County  
H. Edward Maull, Jr., Esquire, Vice President of Delaware State  
Bar Association, Sussex County  
All Delaware Law Enforcement Agencies  
Judith Schuenemeyer, Esquire, Community Legal Aid Society, Inc.  
Christine M. McDermott, Esquire, Delaware Volunteer Legal Services  
Thomas W. Nagle  
Anna A. Lewis  
H. John Betts  
Law Libraries: New Castle, Kent, Sussex, Widener University  
Digilaw



Dated: February 13, 1995

## **JUSTICE OF THE PEACE COURTS CONTINUANCE POLICY**

### **GENERAL POLICY**

To ensure that litigation takes no longer than is reasonably necessary, continuances may be granted upon good cause (if the interest of justice requires it), except that requests made during trial may be granted only in cases of extreme emergency.

### **CONTINUANCE PROCEDURES**

. If possible, requests should be in writing. You should include in the request the specific reason you wish a continuance and the position of opposing counsel or party on the requested continuance, if possible. (Prior to requesting a continuance from the court, you should attempt to contact the opposing party or counsel so that you can tell the court if they are agreeable to the continuance request.) If you are requesting the continuance because you must appear in another court, please provide a copy of the other court's trial notice scheduling your appearance at the court. (If the notice is not available, please state the name of the case, the court in which the case will be heard, the date and time of the appearance, and the date the other case was scheduled, in your continuance request.)

. You must appear at the Justice of the Peace Court at your scheduled hearing time unless you are granted a continuance. As soon as you learn that you need to change the time of the Justice of the Peace Court hearing, you should request a continuance from the Justice of the Peace Court immediately.

. Requests for more than one continuance by a party will be carefully considered by the court and, in many cases, will not be granted.

. Continuances granted as a result of a Bill of Particulars, counterclaim, or other court order, are attributed to the court and not a party.

Dated: February 13, 1995

. To ensure that the Justice of the Peace Courts comply with speedy trial goals, we may not be able to accommodate the schedules of parties and counsel in setting trial dates.

**IN CIVIL CASES:**

. If you wish to obtain a continuance so that you can discuss the case with the other party in order to settle the case without a court trial, you may request a continuance for purposes of settlement from the Justice of the Peace Court for up to thirty (30) days. Two such continuances (one from each party) may be requested. If the case has not been settled after that time, the case will be scheduled for trial.